

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 69 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

YUNUSBHAI GAFARBHAI NAGORI

Versus

STATE OF GUJARAT

Appearance:

M/S THAKKAR ASSOC. for Petitioner
MR KAMAL MEHTA ADDL.GOVERNMENT PLEADER
for Respondent No. 1
MR SUNIL C PATEL for Respondent No. 4

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 01/05/98

ORAL JUDGEMENT

By this application, the petitioner who is detained, pursuant to the order passed on 10th December, 1997 by the District Magistrate at Ahmedabad, invoking his powers under Sec.3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (for short the "Act"), calls in

question the legality and validity of the order.

2. The petitioner deals in Kerosene, Diesel and Petroleum items. On 1st October, 1997, the Supply Officer received the message from the Dani-Limda Police Station that in Kharawala Compound owned by Yunus Gafarbhai, one tanker was burnt. Because of the spark in electric motor nearby, it caught fire, when the tanker contained with the solvent, was being emptied. Thereafter at different places, inquiries were made. It was found that different persons were involved. By duplicity, the petitioner was playing mischief with common-good for unjust enrichment. When the Supply Officer alongwith his team visited the shop of the petitioner, it was found that he was also dealing in solvent illegally. He was getting the quota by unlawful means and was providing to others for mixing in Kerosene and Petrol. He was thus committing the offence punishable under Secs. 3 and 7 of the Essential Commodities Act. By unlawful means, he was encouraging black-marketing and damaging national economy. Providing adulterated Petroleum, he was paralysing the set up for prosperity. To check his mal-practice, stricter action was found necessary. The District Magistrate, in the facts and circumstances, found that the only way out to check his black-marketing activities was to pass the impugned order. Consequently, the impugned order came to be passed. The petitioner was arrested and at present kept under detention.

3. On several grounds, the order of detention is assailed, but at the time of hearing before me, both the parties confined to the only point namely representation having been not considered at all.

4. Under Article 22(5) of the Constitution of India, whenever such detention order is passed the detenu has to be informed providing necessary documents and particulars so that he can make effective representation against the order passed. If he then makes the representation after the receipt thereof, the concerned authority has to deal with the same promptly and dispose the same of at his earliest as liberty of the citizen is put at the highest pedestal in the Constitution. Whenever without a trial a man is confined, the authority passing the order or receiving the representation must, therefore, be prompt in disposing of the representation, but if there is unjust delay the order of detention if passed has to be declared unconstitutional and illegal. At this state, it is necessary to refer the decision of the Supreme Court rendered in the case of Raghavendra Singh vs.

Superintendent, District Jail, Khanpur and others - AIR 1986 S.C. 356, wherein it is laid down that the representation must be dealt with promptly and disposed of without any undue delay. Till the same is disposed of without wasting time the same has to be attended and final decision has to be reached. If the representation is received by one authority who is not supposed to deal with the same, his duty is to promptly send it to the concerned department or authority so that the said authority may after the receipt thereof deal with the same promptly and dispose the same at his earliest without wasting time. In the case before the Supreme Court, the representation was sent to the President's Secretariat, and the Prime Minister's Secretariat received the same on 19th March 1985; and thereafter it was sent to the Ministry of Home Affairs on 25th May 1985. The same was then dealt with on May 31st, 1985. There was, therefore no delay so far as the Ministry of Home Affairs was concerned. But there was a delay in sending the representation from Prime Minister's Secretariat to the Ministry of Home Affairs. In that regard, it was argued before the Supreme Court that the representation should have been addressed to the Ministry of Home Affairs and not to the President or Prime Minister because the President or the Prime Minister receives thousands of memorandums or representations from every part of the country and therefore it was not expected to be dealt with as expeditiously as possible as they would be considered had the same been addressed to the appropriate ministry. Dealing with the contention, it is observed that, even if the representation is sent to the Prime Minister or the President, the same has to be sent to the concerned department for taking appropriate action. There may be some delay in sending the representation from one Secretariat to the concerned department of Ministry, and in that case some allowance may be made for the time taken in forwarding the representation to the appropriate Ministry, and even taking all such time allowances, if the representation is not dealt with promptly and no appropriate order at the earliest is passed, the detenu will be entitled to be set at liberty. It is also observed that even if the representation is addressed to the President or the Prime Minister, no fault can be found with the representation because the "Central Government" means the 'President' or the 'Prime Minister', and if the representation is addressed to the President or the Prime Minister, the same should be considered to be the representation properly addressed to the Central Government.

5. Similar view is also taken by the Supreme Court

in the case of Lallubhai Jopgibhai Patel, vs. Union of India and Others AIR 1981 S.C. 728 = 1981 Cr.L.J.288, Mentioning about supply of materials and language thereof it is held that if the representation is made by the detenu and forwarded to the Central Government at his instance, is not disposed for a long time, the continuation of detention will be illegal. In another case of Amir Shad Khan and another Vs. L. Hmingliana AIR 1991 Supreme Court 1983, it is held that if the detenu makes the representation and requests the State Government to forward the same to Central Government for consideration, the State Government is under obligation to do so and if State Government refused to accede to his request, it would be unjust and in total disregard of the right conferred on the detenu by Article 22(5). It thus shows the importance of representation and that importance cannot be marred by delay in the submission. What is held by this Court in the case of Dr.Narayan Tukaram Baddi Vs. The District Magistrate and Others 1995 (2) G.L.H. 1062 is that the detenu is not only to be informed the grounds of his detention so as to provide earliest opportunity to make representation but there is also the corresponding obligation to prompt consideration of the representation. Though no time limit is prescribed within which the representation should be considered, the utmost promptitude, expedition and diligence is expected from the authority obliged to consider such representation. Any remissness, indifference or avoidable delay on the part of the authority obliged to consider representation would vitiate the continued detention of the detenu. What becomes clear from all these authorities is that reasonable delay or uncontrollable delay will not be fatal but unjust or avoidable delay or deliberate delay will certainly be fatal to the detaining authority if the representation is not considered promptly because nothing can be taken lightly or casually as the person is detained without a trial. If there is a delay, it has to be explained, and if not properly explained filing affidavit certainly delay that can be termed unjust will be fatal and continued detention must be held to be illegal.

6. In view of such law made clear by the Supreme Court & this court, the petitioner succeeds on the point of the representation having not been considered by the authority at all. As submitted, the petitioner on 23/12/1997 sent his representation to the District Magistrate. Same was delivered on 26th December, 1997. It was then the duty of the District Magistrate to forward the same to the Central Government through State

Government for necessary consideration. It is yet not considered. Mr. Rao, the learned Additional Central Government Standing Counsel, representing the Union of India has today submitted the affidavit sworn in by the Under Secretary, Ministry of Food and Consumers Affairs. It is taken on record. The Central Government, on 13/1/1998, received the representation but it is not made clear whether the same was considered and disposed of. When shrewdly about consideration of representation, the authority is silent in the affidavit, it should be assumed that the representation is yet not considered. Why it is not considered is also not made clear. Hence in view of the decision rendered in Raghvendra Singh (Supra) by the Supreme Court, representation having been not promptly considered, the right of the petitioner has been jeopardised, as a result, the continued detention must be held to be illegal.

8. For the aforesaid reasons the petition is allowed and impugned detention order dated 10.12.97 being unconstitutional and illegal is hereby quashed and set aside, and the petitioner is ordered to be set at liberty forthwith if not required in any other case. Rule accordingly made absolute.

(ccs)